

**Testimony of Community Catalyst before the Massachusetts Department of Public
Health and the Massachusetts Attorney General**

Regarding the Proposed Conversion of Caritas Christi

Dorchester, MA

July 1, 2010

My name is Renée Markus Hodin, and I am an attorney and Project Director at Community Catalyst. Thank you for holding this hearing to allow for the community to voice its questions, comments and concerns about the proposed conversion of Caritas Christi to for-profit status. This transaction would result in a major change in the health care landscape of Massachusetts and requires a hard look at the potential impact on the communities served by the hospital. I'm pleased to offer my oral comments today and will also submit a set of written comments.

Community Catalyst is a national non-profit advocacy organization dedicated to quality affordable health care for all. Since 1997, Community Catalyst has been working to build the consumer and community leadership required to transform the American health system. With the belief that this transformation will happen when consumers are fully engaged and have an organized voice, Community Catalyst works in partnership with national, state and local consumer organizations, policymakers, and foundations, providing leadership and support to change the health care system so it serves everyone - especially vulnerable members of society.

From 1996 through 2004, Community Catalyst, with the West Coast Office of

Consumers Union (the publisher of Consumer Reports), led a joint project called the Community Health Assets Project. This project provided expertise and assistance on the conversion of nonprofit health care institutions – hospitals, BCBS plans -- throughout the country and offered technical and strategic consultation in the creation of health care conversion foundations

Through CHAP, we worked with a variety of regulators and analyzed numerous state statutes relating to conversions. It is our experience that the regulators who were diligent in their review of the transaction were most successful in protecting the assets for the community and were champions for consumers in their states.

As a result of the Project, we helped to:

- Heighten regulatory scrutiny of conversion applications and other proposed transactions;
- Preserve more than \$18 billion in charitable assets in more than 170 new health philanthropies;
- Expand the capacity of dozens of local groups around the country to successfully represent their communities' interests in health system restructuring;
- Educate advocates, regulators, the media and the public through the publication of a conversion model act, a compendium of conversion laws, a guide to building and maintaining strong conversion foundations.

Concretely, as a result of this work, three Blue Cross and Blue Shield conversion proposals involving plans in multiple states were rejected as running counter to the public interest, and two others were withdrawn by the plan when regulators began asking hard questions. In the hospital sector, the Project helped to ensure that any approved deal included conditions that protected access to health care services and preserved charitable assets.

In the mid-1990s when we began this project, the health system was undergoing significant change. The rapid growth of managed care and the drive to lower costs transformed the health care marketplace. Suddenly, nonprofit corporations claimed to “need” significantly greater access to capital, and we saw a tidal wave of hospital conversions

With national health reform beginning to be implemented, it appears we are now at the doorstep of another period of health care system transformation. As a result, we are beginning to see a new wave of hospital conversions, mergers and sales.

And though it’s now 2010, the questions remain the same: First, “what impact will the conversion have on the quality, accessibility and affordability of health care?” Related questions include:

- Which health services will the new for-profit prioritize?
- Which services will the for-profit continue or expand?
- Which services will the for-profit reduce or eliminate?
- What will happen if the for-profit corporation sells, merges or transfers to new owners?

In order to answer these questions, we think it is essential for the Department of Health to hire an independent consultant to conduct a community needs assessment.

Second, as many speakers have so passionately attested, this is a beloved “neighborhood institution.” So, the next question is: What will happen to the nonprofit assets that have grown over the years as a result of donations, tax-exemptions, and other public support? Under charitable trust law, if the nonprofit converts to a for-profit, all of the assets of the

nonprofit must continue to serve its charitable mission. Typically, this has resulted in the creation of a foundation into which the charitable assets are deposited. In this case, the parties to the sale assert that there are no remaining assets to create a foundation. While this may ultimately be the case, the public nature of the assets demands a high level of scrutiny. We believe it is essential for the Attorney General's Office to commission an independent valuation of the Caritas assets to ensure that fair market value is being paid.

A well-known example of why an independent valuation is necessary is found in the conversion of Blue Cross of California. There, with the assistance of an outside financial consultant, the \$100 million that Blue Cross originally identified as a charitable contribution was valued at more than \$3 billion. This sale ultimately resulted in the creation of two foundations – The CA Endowment and CA Wellness Foundation -- which have gone on to support health care advocacy and programs throughout CA.

It's also important to take note of the conditions that other regulators have imposed in order to protect the public interest. For example:

- In the conversion of Sharon Hospital, Connecticut Attorney General Richard Blumenthal required the for-profit buyer to share with the conversion foundation 25% of net earnings in excess of 7% of total revenues for the first ten years as determined by an independent auditor.
- In the conversion of Daniel Freeman Hospitals, California regulators imposed conditions such as: an extended period that Tenet was required to keep one of the hospitals open, the delivery of more free care to the community, a reporting mechanism to the Attorney General to monitor the amount of free care provided

annually, and penalties for failing to deliver the required amount of free care.

- In the sale of Bayonne Medical Center, the New Jersey Department of Health and Senior Services required that the new owners create a community advisory board and that they conduct a community needs assessment within 6 months of the closing.

In closing, this deal is being watched carefully both here in MA and elsewhere. I can assure you that regulators in other states are looking to see how the Caritas deal is reviewed and ultimately what is done to protect both health care services and charitable assets.

The stakes are high. We thus urge you to scrutinize the deal carefully by:

- Hiring an expert to conduct an independent valuation
- Hiring an expert to conduct a community needs assessment
- And, if the deal is deemed to be in the public interest, by creating a foundation to account for communities' long investment in this system

Thank you.